

OGC Has Reviewed

Precis of OGC 76-6048, (1 November 1976)
Comptroller General Decisions B 183086 and B 184990

The CSC regulations on which the Comptroller General decisions are based are contained in Federal Personnel Manual (FPM), Chapter 300, Subchapter 8 and do not extend to employees of CIA. Agency employees do not serve in competitive positions or in positions under the General Schedule. They are not in the competitive Civil Service nor are they in the excepted Civil Service under the General Schedule. Title 5 U.S.C., Section 2102 defines the "competitive service" to include all appointive positions in the executive branch except "positions which are specifically excepted from the competitive service by or under statute". The Agency is specifically exempt from the provision of the Classification Act of 1949 as it relates to the classification of positions under the General Schedule and to pay rates for positions under the General Schedule. CIA employees are appointed under the authority of Section 8(a) of the CIA Act, which authorizes expenditures for personal services notwithstanding "any other provisions of law", and CIA positions are excluded from the competitive civil service.

With regard to Agency regulations, there is no provision for procedures comparable to those in the FPM Chapter 300, Subchapter 8, on which the Comptroller General decisions are based. It is significant in relation to this subject, the Agency has never determined directly or by implication from its practices, either prior or subsequent to the recent Comptroller General decisions, that its regulation require temporary promotions when an employee is assigned to a position graded higher than the grade of the individual. As the Comptroller General acknowledges in these decisions, the interpretation of regulations by an agency charged with their administration is entitled to be given great weight.

The propriety of CIA's assignment policies has been acknowledged by the Comptroller General. In a decision dating back to December 1959 (B140877), it was held that mere adoption of the principles of the Classification Act in the Agency regulations, rules and actions does not require, in light of express exemption of CIA from the Act, and the Agency's unique statutory authorities, that CIA follow 5 U.S.C. 38 (now 3341) which essentially limits details to 120 days.